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divert it entirely, if this be necessary to the ordinary use or improvement of his land even, though the result be the cutting off of the sources of his neighbor's well, or the withdrawal of water already collected therein. This case has been followed generally throughout the United States.

In *Chasemore v. Richards*, 7 H. L. C. 349 (1859), percolating water was appropriated to be sold to the inhabitants of a village. The plaintiff complained of the interception of the sources of his mill-stream, but the House of Lords refused to allow him to recover, holding that the right to take underground water is not dependent upon the purpose for which it is diverted, thus recognizing and extending the doctrine laid down in *Acton v. Blundell*. This view had been taken in Vermont in a case of malicious interception, *Chatfield v. Wilson*, 28 Vt., 49 (1855). In England the right to interfere with the course of surface water not confined in a stream had previously been declared to be absolute, *Broadbent v. Ramsbotham*, 11 Ex. 602 (1856).

While decisions affirming the right of a land owner to intercept percolating water before it reaches another's land are numerous, cases dealing with the withdrawal of such water from the land of another are scarcely to be found. It is held that by inducing percolation one may take water from his neighbor's well, *New River Co. v. Johnson*, 2 E. & E. 435, (1860); but not from his stream, *Canal Co. v. Shugar*, L. R. 6 Ch. 483 (1871). It is difficult to see on what principle this distinction can be made.

In a recent New York case, *Forbell v. City of New York*, 160 N. Y. 357 (1899), no interference with well or stream was charged. By means of powerful suction pumps erected in wells driven on its own property the defendant municipal corporation daily withdrew quantities of subsurface water from the plaintiff's land. The Court granted relief to the plaintiff on the ground that to be lawful the appropriation of underground water must be for purposes connected with the ordinary use or improvement of the land, thus repudiating the doctrine of *Chasemore v. Richards*, *supra*, and adopting the view expressed by Lord Wensleydale in that case. The decision seems to represent a logical development of the common law as laid down in *Acton v. Blundell*.

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RIPIARIAN PROPRIETORS; TAKING PRIVATE PROPERTY WITHOUT JUST COMPENSATION.—The U. S. Supreme Court on November 12, 1900, decided that to cut off a riparian owner from access to navigable waters was not taking private property without just compensation, *Scranton v. Wheeler*, 21 Sup. Rep. 48. The plaintiff owned land originally granted by U. S. patent and bounded by "the right bank of the Ste. Marie River," Michigan. A Government pier has been built in the river bed which entirely cuts off the plaintiff's access to the river. Even if the plaintiff owned the fee of the river bed, says HARLAN, J., he acquired the same subject to the right of the Government to improve navigation

and so subject to "the possibility that such right might become valueless." The reply of SHIRAS, J., dissenting, with whom GRAY and PECKHAM, J. J., concur, would seem to be most pertinent; the knowledge that private property is liable to be taken for a public purpose has not hitherto been supposed to deprive the owner of the right of just compensation. The learned Justice HARLAN fails to distinguish between the ownership of the fee of the highway and the abutting owner's right of access. Ownership of the former, as he says, is immaterial since it is already servient to an easement, and improving this easement takes no property from the plaintiff unless a distinct property right is affected. That the right of access may be such a distinct property right does not appear to have occurred to the learned Justice. Yet such is the English law. *Rose v. Groves*, 5 Mann. & G., 613 (1843); *Lyon v. Fishmongers Co.*, L. R., 1 App. Cas., 662 (1876). Such intangible rights have received slow recognition except where the early common law doctrines of trespass could not be invoked. Such were the N. Y. Elevated Railway cases where the plaintiffs did not own the fee of the street. *Story v. N. Y. El. R. Co.*, 90 N. Y., 122 (1882); *Hare Amer. Const. Law*, 372. Compare also *Haskell v. New Bedford*, 108 Mass., 208 (1871); *Brayton v. Fall River*, 113 Mass., 218 (1873); *Delaplaine v. Chic. & N. W. R. Co.*, 42 Wis., 214 (1877); *Brisbine v. St. P. & S. C. R. Co.*, 23 Minn., 114 (1876); *Ind. B. & W. R. Co. v. Eberle*, 110 Ind., 542 (1886); *Steers v. Brooklyn*, 101 N. Y., 51 (1885). It is submitted that cases holding contra are opposed to justice and the general trend of authority, *Gould v. H. R. R. Co.*, 6 N. Y., 522 (1852); *Stevens v. Patterson*, 34 N. J. 532 (1870); *Tomlin v. Dubuque R. Co.*, 32 Ia., 106 (1871). "So far as these cases justify the cutting off of a riparian proprietor they justify taking of property without just compensation." *Cooley Const. Law*, 6th Ed., 670, note 1.

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AGENCY—EMPLOYER'S LIABILITY TO SURGEON FOR CARE OF INJURED EMPLOYEE.—The master is under no legal obligation to provide medical attendance for a servant injured in the course of his employment, whether the injury sustained be traceable to the employer's fault, or not, though in the former event the expense incurred may be included in the damages recovered for the injury.

The question whether, and under what circumstances, an agent of the employer, not expressly authorized therefor, may bind his principal by hiring a surgeon in an emergency to save a servant's life has been before the courts on numerous occasions in recent years, and in many of these instances the injured man has been one employed by a railway company.

It has often been held that a general agent of a railway corporation may bind his company by contract for such medical attendance as is necessary for the injured servant, though it seems difficult to support these decisions on any sound principle of agency. *Toledo, etc., Ry. v. Rodrigues*, 47 Ill. 188 (1868); *Walker v. G. W. Ry.*